

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:

Clean Harbors Environmental Services, Inc.  
2247 South Highway 71  
Kimball, Nebraska 69145

EPA ID Number NED981723513

Respondent.

Proceeding under Section 3008(a) and (g) of  
the Resource Conservation and Recovery Act  
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. RCRA-07-2003-0100

**I. PRELIMINARY STATEMENT**

This proceeding was initiated on or about March 28, 2003, when the United States Environmental Protection Agency, Region VII (Complainant or EPA) issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to Clean Harbors Environmental Services, Inc. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 et seq., the Complainant sought civil penalties for alleged violations of 40 Code of Federal Regulations (C.F.R.), Sections 264.31, 264.173(a), 264.177(c) and 264.1050(d), and Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska (Title 128), Chapter 21, Sections 003, 009 and 020.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CA/FO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

## **II. CONSENT AGREEMENT**

1. Complainant and Respondent agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$ 38,500 as set forth in Section III.A. of the Final Order and shall perform a Supplemental Environmental Project (SEP) as set forth in Section III.E. of the Final Order. The projected cost of the SEP is \$233,000. Respondent agrees that in any publicity regarding the SEP or the results of the SEP, Respondent will indicate that the SEP is being undertaken as part of the settlement of an enforcement action brought by EPA.
8. Respondent agrees to pay any stipulated penalties set forth in Section III.F. of the Final Order.
9. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
10. This Consent Agreement and Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 19 of the Final Order provides Respondent with written notice, in accordance with Paragraph 42 of the Final Order, that all requirements hereunder have been satisfied.
11. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

### **III. FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

12. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$ 38,500.00.

13. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2003-0100, on the check. A copy of the check shall also be mailed to:

Alyse Stoy  
Office of Regional Counsel  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

14. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

15. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

## **B. Compliance Actions**

Respondent shall take the following actions within the specified time periods, and according to the terms and conditions specified below:

16. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA and NDEQ copies of its records documenting inspections at the facility for the previous month. These records shall reflect the condition of all tanks and containers at the facility and all other information required to be recorded therein by Respondent's permit. Respondent shall continue submitting such records to EPA and NDEQ every thirty (30) days for a period of six (6) months following the effective date of this Order.

17. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA and NDEQ copies of its drum storage records for a one (1) week period during the previous month. These records should describe the wastes being stored, the drums in which the wastes are stored and the location of the drums within the facility. Respondent shall continue submitting such records to EPA and NDEQ every thirty (30) days for a period of six (6) months following the effective date of this Order.

18. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA and NDEQ photographs of its facility demonstrating that all hazardous waste containers are in good condition and being stored properly and that all tank equipment has been properly marked in accordance with its permit and 40 C.F.R. Subpart BB.

## **C. Submittals**

19. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Edwin G. Buckner  
Air, RCRA and Toxics Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

20. Respondent shall submit a copy of all documents and other correspondence required to be submitted to NDEQ by this Final Order to:

Brian Gorman  
Program Specialist  
Compliance Unit  
Waste Management Section  
Nebraska Department of Environmental Quality  
Suite 400, The Atrium  
1200 'N' Street  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

21. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order to:

R. Craig Lackey, Esq.  
Vice President & Chief Counsel  
Clean Harbors Environmental Services, Inc.  
Law Department  
200 Arbor Lake Drive, Suite 200  
Columbia, SC 29223

And

Danielle Reader  
Senior Facility Compliance Manager  
Clean Harbors Environmental Services, Inc.  
2247 South Highway 71  
Kimball, Nebraska 69145

22. EPA will review each submission of a plan or report by Respondent and will notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the parties may agree, Respondent shall amend or revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. Upon resubmission, EPA, in its sole discretion, may either approve the document, or, if EPA determines that the document does not adequately address the comments provided by EPA, EPA may unilaterally modify the document and will provide Respondent with a copy of the document as modified by EPA, to be implemented in accordance with any modifications. If, upon resubmission, a document, or portion thereof, is

unilaterally modified by EPA, Respondent shall be deemed to have failed to submit such plan, report or item timely and adequately.

#### **D. Access**

23. EPA and its authorized representatives shall have access to the Facility at all reasonable times to monitor Respondent's implementation of, and compliance with, the terms of this Final Order. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

#### **E. Supplemental Environmental Projects**

24. Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA and NDEQ a workplan for instituting effective hazardous waste management programs at high schools in the State of Nebraska. The purpose of this project is to identify schools needing assistance with the management of hazardous wastes by virtue of their use in chemistry laboratories, art departments, and other campus locations and provide assistance in collecting, labeling, packaging, transporting, treatment and/or disposal of said materials at no cost to the schools selected. This workplan shall specifically include the following:

- a. A description of the process to select schools for inclusion in the project;
- b. A description of the activities to be undertaken at each school, including but not limited to an inventory of all wastes, including a description of how hazardous waste determinations will be conducted, a determination of the facility's generator status, a description of how and where such wastes are to be stored, a description of the actions undertaken to address any leaks or spills, and a description of how any hazardous wastes are disposed. This summary shall also include a description of how facility personnel are to be included in the performance of these activities so as to allow them to learn proper waste management practices;
- c. A generic Quality Assurance Project Plan (QAPP) to address any sampling or analysis necessary to determine if wastes are hazardous;
- d. A generic Health and Safety Plan (HSP) to address the investigation, collection, packaging, removal, and transportation of wastes from each facility;
- e. A proposed schedule for implementation of the project over a two (2) year period from the effective date of this Order.

EPA will review this workplan in accordance with Section III.C. (Submittals).

25. Upon EPA approval of the SEP workplan, Respondent shall implement the SEP in accordance with the schedule approved therein.

26. Within sixty (60) days of EPA approval of the SEP workplan (and continuing every sixty days thereafter), Respondent shall submit to EPA a progress report documenting its activities for the previous sixty day period. These reports shall identify the schools visited, a description of the activities conducted at each school, including but not limited to an inventory of all wastes, documentation of hazardous waste determinations for each waste, a determination of each facility's generator status, a description of how and where each hazardous waste is to be stored, a description of the actions undertaken to address any spills or leaks, a description of how any hazardous wastes were disposed, the cost to Respondent of the activities undertaken at each school and documentation of said expenditures, the schools to be visited over the course of the next sixty (60) days and the projected costs to be incurred during the next sixty (60) day period. Respondent shall submit to EPA along with such reports copies of any manifests. In addition, Respondent shall notify EPA immediately upon its determination that there are no other schools to be addressed.

27. Within sixty (60) days of the completion of the SEP, Respondent shall submit to EPA a Final Report. This report shall provide a summary of all activities undertaken as part of the SEP and documentation of all costs expended in the course of completing the SEP. Copies of documents previously submitted to EPA need not be resubmitted.

#### **F. Stipulated Penalties**

28. Respondent shall be liable for stipulated penalties for failure to comply with the terms of this Final Order, as provided herein. For purposes of this Section, compliance shall mean timely and complete performance as determined by EPA in accordance with this Final Order and any workplans and schedules approved by EPA pursuant to this Final Order.

29. All stipulated penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the violation or completion of the activity. Separate stipulated penalties for separate violations of this Final Order may accrue simultaneously. All stipulated penalties owed to the United States under this Final Order shall be due and payable within thirty (30) days of Respondent's receipt of a written demand for payment and shall be paid in accordance with the provisions of Paragraph 13 herein. Respondent shall reference on its check that the payment is for stipulated penalties. Payment of any stipulated penalty shall not affect Respondent's obligation to comply with the provisions of this Final Order.

30. No portion of any stipulated penalty paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

31. In the event that Respondent does not incur expenditures in the amount of at least \$233,000 in performance of the SEP, stipulated penalties will be owed as follows:

a. If Respondent spends fifty (50) percent or less than \$233,000, a stipulated penalty of \$58,250 shall be paid to EPA;

b. If Respondent spends between fifty-one (51) percent and seventy-five (75) percent of \$233,000, a stipulated penalty of \$29,125 shall be paid to EPA;

c. If Respondent spends between seventy-six (76) percent and ninety (90) percent of \$233,000, a stipulated penalty of \$11,650 shall be paid to EPA.

32. In the event that Respondent does not submit the SEP workplan described in Paragraph 24 above, stipulated penalties shall accrue in the amount of \$1000.00 per day, beginning with the first day after the SEP workplan is due and continuing to accrue until the date said workplan is submitted to EPA.

33. In the event that Respondent does not submit the progress reports described in Paragraph 26 above, stipulated penalties shall accrue in the amount of \$500.00 per day, beginning with the first day after the progress report is due and continuing to accrue until the date said progress report is submitted to EPA.

34. In the event that Respondent does not submit the records and/or photographs required by Section III.B. herein, stipulated penalties shall accrue in the amount of \$500.00 per day, beginning with the first day after the record and/or photograph is due and continuing to accrue until the date said record and/or photograph is submitted to EPA.

#### **G. Parties Bound**

35. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.



## **H. Reservation of Rights**

36. This Consent Agreement and Final Order addresses all administrative matters alleged herein. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

37. Notwithstanding any other provisions of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

38. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

39. Except as expressly provided herein, including the provisions of Section III.G. (Parties Bound) of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

40. Notwithstanding any other provisions of this Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

41. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

42. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

**For the Respondent:**



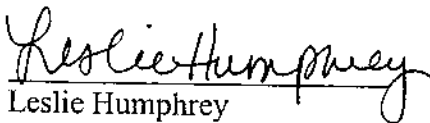
Raeford Craig Lackey, Esquire  
Vice President & Chief Counsel  
Environmental Law and Litigation  
Clean Harbors Environmental Services, Inc.

February 16, 2004

Date

**For the Complainant:**

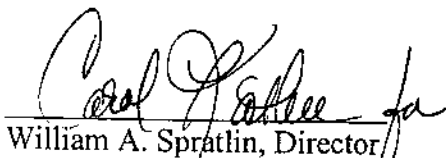
The United States Environmental Protection Agency



Leslie Humphrey  
Associate Regional Counsel

February 19, 2004

Date



William A. Spratlin, Director  
Air, RCRA and Toxics Division

February 19, 2004

Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick  
Regional Judicial Officer

Date

February 23, 2004

IN THE MATTER OF Clean Harbors Environmental Services, Inc., Respondent  
Docket No. RCRA-07-2003-0100

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Leslie Humphrey  
Chief, Regulatory Programs Branch  
Office of Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

RaeFord Craig Lackey  
Vice President and Chief Counsel  
Environmental Law and Litigation  
Clean Harbors Environmental Services, Inc.  
Law Department  
200 Arbor Lake Drive, Suite 200  
Columbia, South Carolina 29223

Copy by Facsimile and  
First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20460

Dated: 2/23/04

  
Kathy Robinson  
Regional Hearing Clerk